

Statement of Senator John F. Kerry
Senate Subcommittee on Oceans, Atmosphere and Fisheries
Oversight Hearing on NMFS Management Issues
May 9, 2002

Good morning. Today, the Subcommittee on Oceans Atmosphere and Fisheries is holding an oversight hearing on the current state of fishery and protected resource management in the United States. We have convened this hearing to get to the root causes of what has come to be seen as a national crisis. This has hit close to home for many of us. As many of you know, legal challenges to federal fishery management plans have been filed on every coast and have affected fisheries in the home states of many of our members. Most recently, a federal district judge ruled that Framework 33 to the New England groundfish fishery management plan failed to comply with the law, and has ordered NMFS to implement strict interim management measures for the fishery, many of which are going to have severe economic consequences for our fishing communities.

We knew the transition to sustainable fisheries would not be an easy one, but a troubling picture is now emerging of a management system in deep crisis. This new crisis is not the disaster we faced in New England in the late 1980s, when cod stocks were plummeting. On the contrary, scientific information shows that we are climbing out of that pit -- with some stocks at levels not seen in over 20 years. This new management crisis is harder to graph or measure -- but its existence is real and the conflict is deeply affecting everyone in the system, most directly the fishermen. The combination of multiple statutory mandates, complicated regulatory procedures, and resource limitations have made it almost impossible for managers -- or fishermen -- to respond quickly, flexibly, or appropriately to address a management problem. In addition, implementation of the Sustainable

Fisheries Act has been plagued by conflict, delays and inconsistent interpretations of what we enacted in 1996.

We need to make our management system work. The downside of judicially-drafted management plans was driven home in the New England case. Given the possibility that the Judge could have closed the fishery, we were initially relieved that she adopted the agreement negotiated among NMFS, the affected states, the Conservation Law Foundation, and most of the fishery intervenors. These groups recognized that the fishery was out of compliance, made hard choices, and brought forward an plan for the 2002 fishing season that would improve conservation performance without devastating the industry. However, the Judge's order also contained additional interim measures that threw off this delicate balance, prompting the party that filed the lawsuit in the first place -- Conservation Law Foundation -- to ask the Court to reconsider. While endless litigation should not be encouraged, I do support this call for reconsideration. The Conservation Law Foundation and others involved in the negotiated agreement demonstrated a commitment to both restoring the fishery and sustaining our fishing communities -- the heart of the Sustainable Fisheries Act.

These types of hard choices should have not have been made in court, where there is little room for discussion and flexibility. Now the fishery is in disarray, there are protests in our ports, and we are left asking – *how can we help our communities get through this season, how do we restore confidence in the fishery management process, and, how will we prevent this from happening again?* This same scenario has played out – or will play out – in coastal communities around the country. We need to work together to develop approaches within the agency, within the councils, here in Congress, and through the National Ocean Commission to make this system WORK.

A number of recent management reviews, of which many of our panelists today were involved, indicate that the combination of an unwieldy regulatory process, limited resources for data acquisition and analysis, poor management practices, and a litigation-burdened staff has precipitated the situation. NMFS and the Fisheries Management Councils have been the subject of widespread criticism and an increasing number of lawsuits. As of May 1, 2002, there were 104 open docket cases against the agency. Some call the lawsuits themselves a crisis, and they have certainly placed an incredible burden on the system, the managers, and the fisheries. But the lawsuits also have illuminated problems, and with this knowledge, perhaps we can go about fixing them.

This is why we have called you all here today. Each of you has substantial and intimate knowledge of the system and are working on diagnosing or fixing problems with the current fishery management system.

No one of us can make this system really function well alone -- even Dr. Hogarth, who is making a super-human effort to get things done sensibly and right. The SFA was not supposed to be a paper exercise -- it was supposed to result in better management, better decisions, to benefit real people. We thought successful management would involve measurable increases in biomass, smarter management, modern techniques, and increasing opportunities for our coastal communities. But funding was not matched to the job at hand, and we are now playing catch-up. More disturbing, there appears to be confusion about what constitutes "successful" fisheries management results, and disagreement about how to measure and monitor our progress. I think that betrays a fundamental lack of trust in both the system and among the constituencies. We have to repair that.

This system needs focused resources and smart, efficient processes, because the burden is enormous, and the funding is not plentiful. NOAA Fisheries is the fourth largest regulator in the federal government, yet the agency does not have nearly the resources that its counterparts receive. NMFS has got to have the trained staff and coordinated procedures that will help them effectively and efficiently meet mandates under a suite of laws – including the Magnuson-Stevens Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Regulatory Flexibility Act -- and reams of executive orders and agency guidance.

We also need a coordinated plan among the agency, the Councils, and the Congress to deliver a smart, modern and responsive management system to our constituents. This must include a national plan and adequate resources to reduce capacity nationwide. We simply have too many participants to manage effectively. Without a plan, the drain on the system cannot be overcome. We must be realistic about how long it will take to accomplish this, but we should not countenance unnecessary delay. When we passed the SFA, we asked our fishermen to abide by rebuilding targets and timetables. It is time for us to map out a framework and schedule for getting our own management house in order, so that we can restore confidence that the management system will provide long-term benefits to the fisheries.

Protected resource issues are also an issue. Despite listed endangered species growing from 14 species in 1973 to 47 in 1999, little progress has been made to improve protected species management, except where litigation has targeted resources – such as in the case of Steller sea lions and North Atlantic Right Whales. This lack of preparation places not only protected resources, but also a number of activities, including fishing, in potential jeopardy. This means we must

not only improve our scientific understanding of these species, and the ecosystems in which they all live, but we must also ensure we coordinate our fisheries management with ESA and MMPA obligations.

I know the regulatory system is burdensome and expensive, particularly if we manage all species individually. We should talk frankly about how we can design an integrated regional management system that will help reduce, not add to, this burden. Regional ecosystem planning will clearly help us meet our procedural and management goals. Such plans could revolve around existing Council areas of jurisdiction and would be designed to address all 3 critical components of sustainable use – (1) conservation; (2) societal needs; and (3) economic impacts. We can't just do one at a time, as we do today. That means putting some good minds together, looking at all the tools at our disposal, and mapping out, step by step, how we can simultaneously address the social and economic consequences of a move to ecosystem management. We all need to be involved, and perhaps the Ocean Commission can help us.

I thank you all for coming here today to assist this Subcommittee to help put such a plan together, and I hope we can count on you to continue providing your advice and counsel. In view that we have two panels to hear from today, I would request that you limit your opening comments to five minutes. With that said, I look forward to your testimony before this Subcommittee today and I yield to the Ranking Member of this Subcommittee, Senator Snowe.